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LUC-309/Akhterzzaman 37-34-21

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Reconsideration is requested. Claims 28-35 are presented.

Applicant's arguments presented below focus on certain patentable differences between the invention as claimed and the applied references. However, it is not to be inferred that the failure to argue all differences between the claimed subject matter and the applied references constitutes acceptance of assertions made in the Office Action of alleged similarities between elements of the claimed subject matter and the applied references.

Rejections under 35 U.S.C. 103:

Claims 28-35 are rejected under 35 U.S.C. 103 as being unpatentable over Kowaguchi (U.S. Patent No. 6,201,973) in view of Tomoike (U.S. Patent No. 6,233,447) and Naiki (U.S. Pub. No. 2002/0065070), the latter being newly applied. This rejection is respectfully traversed.

Re: claim 28

Claim 28 includes the step of:

receiving at the mobile communication device a first signal transmitted from the supporting exchange

In paragraph 2 of the Office Action, Kowaguchi and Tomoike are relied upon as teaching certain of the required steps of claim 28. The above quoted step of claim 28 is alleged to be taught by newly cited Naiki, pointing to paragraphs 31 and 33 of Naiki. However, Naiki does not provide this teaching or an equivalent thereof.

Naiki is directed to preventing a communication device, e.g. a cellular telephone, from transmitting electromagnetic waves when the device is in an area where such a transmission could pose a problem to other devices such as cardiac pace-makers. Referring to FIG. 2 of Naiki, the prohibition signal transmitter 31 is installed at the public area 30, such as a train, bus, railway or hospital where the transmission from the cellular telephone is to be prohibited; see paragraph 72. Further, it is taught that the prohibition signaled itself is transmitted as a weak signal level in order to not adversely affect the very devices which could be adversely affected by the transmission of electromagnetic waves from the cellular telephone itself; see paragraph 43. Nothing in paragraphs 31 or 33 is inconsistent with these teachings.

The requirement of claim 28 of receiving the first signal transmitted from the supporting exchange is not taught by Naiki. In fact, Naiki teaches away from such a requirement in that it specifically teaches that the site of the transmission of the prohibition signal transmission is local to the area of concern and that the signal strength of the prohibition signal itself is weak. These requirements teach away from the requirement of claim 28 in which the first signal is transmitted from the supporting exchange. That is, the supporting exchange is not local to the area of concern, e.g. the mobile's location, and would not be transmitting a relatively weak signal because the very signal from the supporting exchange would have to be of sufficient strength to reach the intended mobile communication device. Therefore, this limitation of claim 28 is not supported by the teachings of Naiki, and since the teachings of Kowaguchi and Tomoike are not relied upon with regard to teaching this limitation, the combined teachings of the three references do not render the subject matter of claim 28 obvious. Withdrawal of the rejection of claim 28 is proper and is requested.

Prior art teaches away

It is well-settled that teachings of a reference that teaches away from a limitation of the claimed invention must be considered as well as teachings of the reference that could point towards the invention.

...an applicant may rebut a prima facie case of obviousness by showing that the prior art teaches away from the claimed invention in any material respect. *In re Geisler*, 116 F.3d at 1469, 43 USPQ2d at 1365 (quoting *In re Malagari*, 499 F.2d at 1303, 182 USPQ at 553). *In re Peterson*, 315 F.3d 1325, 65 USPQ2d 1379 (CA FC 2003)

One of ordinary skill in the art would be motivated NOT TO COMBINE the high traffic area information of Tomoike into the device of Kowaguchi as explained below.

The objective of Tomoike is to:

“provide a mobile communication system which can restrict incoming calls to an exchange in a state of congestion and can omit wasteful processing for connecting to a restricting exchange.”
(emphasis added)

Col. 2, lines 31-36.

That is, during a time of high traffic congestion at an area, wasteful processing is eliminated for a call request handled by the mobile exchange serving the mobile in the high traffic congestion area. Such an incoming call request is aborted prior to reaching the mobile exchange of the destination mobile, and hence **there is no signal or communication transmitted from the mobile exchange to the destination mobile during the time that high traffic congestion exists**. This is a primary teaching of Tomoike in order to stop unnecessary processing at the mobile exchange. Hence, this basic principle of Tomoike would be understood by one of ordinary skill in the art as teaching NOT to send signals from the mobile exchange to a mobile device when the mobile was in a high congestion area. This teaches away from the claimed invention in a material respect, and in accord with *In re Peterson* rebuts the prima facie case of obviousness attempted to be made in the Office Action.

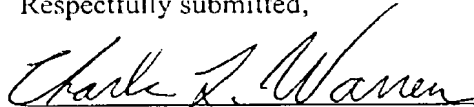
As shown in the signal flow diagram in FIG. 2 of Tomoike, when mobile communication exchange 3 is experiencing a high traffic condition, an incoming request to establish a call with mobile station 4 (served by mobile communication exchange 3) is aborted prior to the call request reaching mobile communication exchange 3; see step 28. Therefore, one of ordinary skill in the art would be motivated by Tomoike to abort new incoming call requests prior to the request reaching the mobile exchange thereby eliminating the need for any additional signaling from the mobile exchange to the destination mobile during times of high traffic congestion. Requiring the mobile exchange to transmit a further signal to the mobile during high traffic congestion is contrary to the objective and teachings of Tomoike.

In claim 28 a first signal is transmitted from the exchange and received at the mobile device while the mobile device is within a geographical area designated as a high traffic area. One of ordinary skill the art would understand that Tomoike teaches away from this requirement as explained above. Thus, the rejection of claim 28 is not supported by the applied references and should be withdrawn.

Claim 30 is believed to be allowable for reasons explained above with regard to claim 28.

If a telephone conference would be of assistance in advancing the prosecution of this application, the Examiner is invited to call applicants' attorney at 630-584-9206.

Respectfully submitted,



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